

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PTI Pacifica Inc.
(formerly GTE Pacifica, Inc.))
)
)
)
)
)
)

File No. EB-07-SE-162

Acct. No. 201132100008

FRN No. 0004339933

ORDER

Adopted: November 15, 2010**Released: November 16, 2010**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and PTI Pacifica, Inc. ("PTI Pacifica"). The Consent Decree terminates an investigation by the Bureau against PTI Pacifica for possible violation of section 52.31 of the Commission's rules¹ regarding provision of wireless-to-wireless local number portability ("LNP").

2. The Bureau and PTI Pacifica have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether PTI Pacifica possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission's rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. § 52.31.

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Larry Knecht, Chief Financial Officer, P.O. Box 500306 CK, Tekken St., Susupe, Saipan, MP 96950 and to counsel to PTI Pacifica Inc., Kenneth D. Patrich, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-07-SE-162
)	
PTI Pacifica Inc.)	Acct. No. 201132100008
(formerly GTE Pacifica, Inc.))	
)	FRN No. 0004339933
)	

CONSENT DECREE

The Enforcement Bureau ("Bureau") and PTI Pacifica Inc. (formerly GTE Pacifica, Inc.) ("PTI Pacifica"), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into PTI Pacifica's compliance with the Commission's regulations in 47 C.F.R. Part 52 regarding the provision of wireless-to-wireless local number portability ("LNP").

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" means the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Compliance Plan" means the program described in this Consent Decree at paragraph 8.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (g) "Investigation" means the investigation initiated by the Bureau in response to the Order issued on April 2, 2007 by the Spectrum and Competition Policy Division, Wireless Telecommunications Bureau in CC Docket No. 95-116.¹

¹ See *Petition of GTE Pacifica, Inc. for Waiver and Extension of Time to Implement Wireless Local Number Portability in the Commonwealth of the Northern Mariana Islands*, *Petition of Choice Phone, LLC for Waiver and Extension of Time to Implement Wireless Local Number Portability in the Commonwealth of the Northern Mariana Islands*, *Petition of Guam Wireless Telephone Co., LLC for Waiver and Extension of Time to Implement Wireless Local Number Portability in the Commonwealth of the Northern Mariana Islands*, Order, 22 FCC Rcd 6619 (WTB, SCPD, 2007) ("GTE Pacifica Order"), recon. pending.

- (h) “MTC” means The Micronesian Telecommunications Corporation² and its predecessors-in-interest and successors-in-interest.
- (i) “Parties” means PTI Pacifica and the Bureau, and each a “Party.”
- (j) “PTI Pacifica” means PTI Pacifica Inc., (formerly GTE Pacifica, Inc.) and its predecessors-in-interest and successors-in-interest.
- (k) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Number portability is defined as “the ability of users of telecommunications services to retain at the same location existing telephone numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”³ Under the Commission’s LNP rules, commercial mobile radio service (“CMRS”) providers that provide service outside the largest 100 MSAs were required to support number portability by May 24, 2004, or within six months after receiving a bona fide request (“BFR”) for number portability, whichever is later.⁴ PTI Pacifica is a CMRS provider that serves an area outside the largest 100 MSAs.

3. On April 2, 2007 the Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, issued an Order denying PTI Pacifica’s request for an extension of time to implement wireless-to-wireless LNP and referring the matter to the Enforcement Bureau for appropriate action.⁵ On May 2, 2007, PTI Pacifica and its affiliated ILEC, MTC, separately filed Petitions for Reconsideration of the Order.⁶

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** PTI Pacifica agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the

² MTC is the incumbent local exchange carrier (“ILEC”) for the Commonwealth of the Northern Mariana Islands (“CNMI”), a self-governing commonwealth in political union with and under the sovereignty of the United States of America.

³ 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(1).

⁴ Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7314 ¶137 (1997).

⁵ See *GTE Pacifica Order*.

⁶ See *Telephone Number Portability*, CC Docket No. 95-116, Petition for Reconsideration of PTI Pacifica, Inc. (formerly known as GTE Pacifica, Inc.), filed May 2, 2007 (“PTI Pacifica Reconsideration”); see also *Telephone Number Portability*, CC Docket No. 95-116, Petition for Reconsideration of Micronesian Telecommunications Corporation, filed May 2, 2007 (“MTC Reconsideration”).

terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, PTI Pacifica agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take on its own motion, or refer to the Commission, any action against PTI Pacifica concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, or refer to the Commission, any proceeding, formal or informal, or take on its own motion, or refer to the Commission, any action, against PTI Pacifica with respect to PTI Pacifica's basic qualifications, including its character qualifications, to be a Commission licensee.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, PTI Pacifica agrees to create within thirty (30) calendar days a Compliance Plan related to future compliance with the provisions of the Act, the Rules, and the Commission's Orders relating to wireless-to-wireless LNP. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** PTI Pacifica shall designate a Compliance Officer who will be responsible for overseeing PTI Pacifica's compliance with the LNP rules and this Compliance Plan.
- (b) **Compliance Training Program.** PTI Pacifica shall establish and maintain an LNP training program for all current employees who are responsible for responding to BFRs from wireless carriers for wireless-to-wireless LNP. PTI Pacifica shall also administer such training to new employees who are responsible for responding to BFRs from wireless carriers for wireless-to-wireless LNP within 30 days of hire.
 - (i) PTI Pacifica's Compliance Training Program shall address, at a minimum, the Rules governing the provision of wireless-to-wireless LNP in response to a BFR for LNP from another wireless carrier.
 - (ii) PTI Pacifica shall update and enhance the foregoing training regarding the FCC's wireless-to-wireless LNP requirements as appropriate and necessary.
- (c) **Compliance Reports.** PTI Pacifica will file Compliance Reports with the Commission ninety days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate, in the form of an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer, as an agent of PTI Pacifica, stating that the officer has personal knowledge that PTI Pacifica (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Part 52 of the Rules, together with an accompanying statement explaining the basis for the officer's compliance certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of PTI Pacifica, shall provide the Commission with

a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Part 52 Rules relating to wireless-to-wireless LNP, and (ii) the steps that PTI Pacifica has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Kathy.Berthot@fcc.gov and Linda.Nagel@fcc.gov.

- (d) **Termination.** The provisions of this paragraph shall remain in effect for twenty four (24) months from the Effective Date.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against PTI Pacifica or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by PTI Pacifica with the Act, the Rules, or Commission Orders.

10. **Voluntary Contribution.** PTI Pacifica agrees that it will make a voluntary contribution to the United States Treasury in the amount of ninety thousand dollars (\$90,000). The payment will be made within thirty (30) days after the Effective Date. The payment must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). PTI Pacifica will also send electronic notification to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov on the date said payment is made.

11. **Withdrawal of Pending Petitions for Reconsideration.** On May 2, 2007, PTI Pacifica and its affiliated ILEC MTC filed separate Petitions for Reconsideration of the *GTE Pacifica Order*.⁷ PTI Pacifica and MTC both agree to withdraw their respective petitions within 10 days after the Effective Date.

12. **Waivers.** PTI Pacifica waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree or the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. PTI Pacifica shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither PTI Pacifica nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and PTI Pacifica shall waive any statutory right to a trial *de novo*. PTI Pacifica, however, may present evidence that it has not violated the Consent Decree. In addition, nothing in this Consent Decree shall preclude PTI Pacifica from petitioning the Commission for relief as to future

⁷ See *supra* note 6.

obligations under Part 52 of the Rules. PTI Pacifica hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which PTI Pacifica does not expressly consent), that provision will be superseded by such Commission Rule or Order.

15. **Successors and Assigns.** PTI Pacifica agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Rules or with the Commission's Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, PTI Pacifica does not admit or deny noncompliance, violation or liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representatives.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief,
Enforcement Bureau

Date

Larry Knecht
Executive Vice President
PTI Pacifica Inc.

Date

Larry Knecht
Executive Vice President
Micronesia Telecommunications Corporation

Date